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RESORTS WORLD AT SENTOSA PTE LTD v. LIM SOO KOK

HIGH COURT MALAYA, KUALA LUMPUR
HANIPAH FARIKULLAH J
[JUDICIAL REVIEW NO: 24-55-12-2014]
13 JUNE 2016

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CIVIL PROCEDURE: *Reciprocal enforcement of judgments – Setting aside registration of foreign judgment – Application for – Judgment creditor obtained judgment at Singapore High Court for gambling debt – Whether judgment for gambling debt contrary to public policy in Malaysia – Whether gaming transaction valid in Singapore – Whether suit was to enforce gaming debt – Whether judgment creditor was availing itself of right of reciprocity of registering registration of valid and lawful judgment of foreign court – Reciprocal Enforcement of Judgments Act 1958, s. 5(1)(a)(v)*

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The judgment creditor ('JC') filed a writ of summons and statement of claim against the judgment debtor ('JD') in the Singapore High Court. The JC subsequently obtained leave from the Singapore court to serve the cause papers on the JD in Malaysia ('the Singapore cause papers'). As the JC's attempt to effect personal service of the Singapore cause papers on the JD was unsuccessful, the JC obtained a Singapore court order for substituted service. After substituted service had been effected and the time prescribed for the JD to enter appearance had lapsed, the JC obtained a judgment in default against the JD in the Singapore High Court. The Singapore judgment was subsequently registered in the High Court of Malaya. The JD filed the present application *vide* encl. 12 to set aside the registration of the Singapore judgment on the ground that its enforcement would be contrary to the public policy in Malaysia pursuant to s. 5(1)(a)(v) of the Reciprocal Enforcement of Judgments Act 1958 ('REJA'), the Singapore judgment being a judgment for a gambling debt. Hence, the issues for the court's consideration were (i) whether the Singapore judgment was contrary to public policy pursuant to s. 5(1)(a)(v) of the REJA; and (ii) whether service of the Singapore cause papers was irregular.

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Held (dismissing encl. 12 with costs):

(1) When a gaming transaction is lawful in the foreign country from where the judgment originates, the registration of the foreign judgment is not against the public policy in Malaysia. The JC was not filing a civil suit to enforce the gaming debt. The JC was availing itself to the right of reciprocity of registering a valid and lawful judgment of a foreign court as expressly provided under REJA. (paras 13-15)

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(2) The JD's application to set aside the service of Singapore cause papers, the order for substituted service and the Singapore judgment was dismissed by the Assistant Registrar of the Singapore High Court. The JD's appeal against the Assistant Registrar's decision was dismissed and

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no further appeal was filed by the JD and the time for the JD to file an appeal against the decision had lapsed. Accordingly, the issues on the irregularity and the validity of the service of the Singapore cause papers, the order for substituted service and Singapore judgment were irrelevant as the Singapore High Court had dismissed the JD's application. (paras 19-21)

Case(s) referred to:

Banque Nasionale de Paris v. Wuan Swee May & Anor [2000] 4 CLJ 387 HC ***(refd)***
Jupiters Ltd (Trading as Conrad International Treasury Casino) v. Gan Kok Beng & Anor [2008] 7 CLJ 715 HC ***(refd)***
Malayan Banking Bhd v. Ng Man Heng [2005] 1 CLJ 833 HC ***(refd)***
The Aspinall Curzon Ltd v. Khoo Teng Hock [1991] 1 LNS 6 HC ***(refd)***
The Ritz Hotel Casino Ltd & Anor v. Datuk Seri Osu Hj Sukam [2005] 3 CLJ 390 HC ***(refd)***

Legislation referred to:

Reciprocal Enforcement of Judgments Act 1958, ss. 4, 5(1)(a)(v)
Rules of Court 2012, O. 65 r. 2A(2)

For the judgment creditor - Syafinaz Vani; M/s Skrine
For the judgment debtor - Tony Woon; M/s Woon & Co

Reported by S Barathi

JUDGMENT

Hanipah Farikullah J:

[1] Enclosure (12) is the judgment debtor's application to set aside the registration of the Singapore High Court judgment dated 8 December 2014.

[2] The judgment creditor opposed the judgment debtor's application.

The Background Facts

[3] The relevant background facts are as follows:

(i) Singapore Cause Papers

(a) The judgment creditor filed a writ of summons and statement of claim both dated 26 March 2014 against the judgment debtor in the Singapore High Court. Pursuant to the Singapore Court Order for service of document out of Singapore dated 3 April 2014, the Singapore court granted leave to the judgment creditor to serve the cause papers on the judgment debtor in Malaysia ("the Singapore cause papers").

(b) As attempts to effect personal service of the Singapore cause papers on the judgment debtor was not successful at the judgment debtor's last known addresses, the judgment creditor obtained a Singapore court order dated 10 November 2014 for substituted service of the Singapore cause papers.

(c) After substituted service has been effected and the time prescribed for the judgment debtor to enter appearance has lapsed, the judgment creditor obtained a judgment in default against the judgment debtor in the Singapore High Court on 8 December 2014.

(ii) Order For Registration Of Foreign Judgment

(a) On 9 December 2014, the judgment creditor's solicitors in Singapore, instructed Messrs Skrine to register the Singapore judgment in this court.

(b) The Singapore judgment was duly registered in the High Court of Malaya by way of an order dated 12 February 2015 ("order for registration"). The judgment debtor was ordered to pay the following sums:

1. the sum of RM1,530,212.48 (equivalent to S$572,363 at the exchange rate of S$1 to RM2,6735 as at 8 February 2014);

2. interest in the sum of RM156,467.58 (equivalent to S$58,525.37 a the exchange rate of S$1 to RM2.6735 as at 8 December 2014) at the rate equal to the Singapore Interbanking Offer Rate at one, three or six months, plus 4% (whichever is higher) pursuant to cl. (h) of the terms and conditions of the credit agreements from 15 March 2013 to the date of judgment;

3. costs and disbursements of RM22,456.46 (equivalent to S$8,399.65 at the exchange rate of S$1 to RM2.6735 as at 8 December 2014) on an indemnity basis pursuant to cl. (c) of the terms and conditions of the credit agreements and credit facility amendments;

together with further interest on the sum of RM1,530,212.48 (equivalent to S$572,363 at the exchange rate of S$1 to RM2.6735 as at 8 December 2014) at the rate of 4% per annum from 9 December 2014 to the date of full repayment).

c) The Order for Registration together with the notice to judgment Debtor of Registration was personally served on the judgment debtor on 6 May 2015.

Issues

[4] The issues for consideration are as follows:

(i) whether the Singapore judgment is contrary to public policy pursuant to s. 5(1)(a)(v) of the Reciprocal Enforcement of Judgments Act 1958 (REJA).

(ii) whether service of the Singapore cause papers is irregular.

Decision

[5] The judgment debtor's primary ground relied upon in this application to set aside the registration of the Singapore judgment is that the enforcement of the judgment would be contrary to the public policy in Malaysia pursuant to s. 5(1)(a)(v) of the REJA.

[6] Learned counsel for the judgment debtor submitted that the Singapore judgment being a judgment for a gambling debt should not be enforced as it is contrary to public policy in Malaysia.

[7] To support his contention, learned counsel for the judgment debtor relied on the following cases:

(i) *Banque Nasionale de Paris v. Wuan Swee May & Anor* [2000] 4 CLJ 387; [2000] 3 MLJ 587;

(ii) *Jupiters Ltd (Trading as Conrad International Treasury Casino) v. Gan Kok Beng & Anor* [2008] 7 CLJ 715; [2007] MLJU 474;

(iii) *The Ritz Hotel Casino Ltd & Anor v. Datu Seri Osu Haji Sukam* [2005] 3 CLJ 390.

[8] On the other hand, learned counsel for the judgment creditor submitted that the registration of a foreign judgment obtained in relation to a lawful gaming transaction in Singapore is not contrary to public policy under s. 5 (1)(a)(v) of the REJA.

[9] To support his contention, learned counsel referred me to the case of *The Aspinall Curzon Ltd v. Khoo Teng Hock* [1991] 1 LNS 6; [1991] 2 MLJ 484.

[10] In the *Aspinall*'s case, the plaintiff, a licensed gambling casino, obtained in the High Court of England a judgment against the defendant and thereafter the plaintiff applied to the High Court in Kuala Lumpur to have the judgment registered under s. 4 of the REJA which application was granted.

[11] On appeal to the judge-in-chambers against the registrar's dismissal of the defendant's application to set aside the registration, the defendant argued *inter alia* that the judgment was for gambling debt, and should not be enforced as it is against the public policy of this country.

[12] It is noted that the High Court in *The Ritz Hotel Casino Ltd & Anor v. Datuk Seri Osu Haji Sukam* [2005] 3 CLJ 390; [2005] 6 MLJ 760 set aside the registration of a foreign judgment for a gambling debt on the ground that the registration contradicted Malaysia's public policy. However the High Court's decision in the *The Ritz Hotel* has been set aside by the Court of Appeal.

[13] In this present case, it seems to me that the judgment creditor is availing itself to the right of reciprocity of registering a valid and lawful judgment of a foreign court as expressly provided under REJA.

[14] As rightly pointed out by learned counsel for the judgment creditor, the judgment creditor is not in this case filing a civil suit to enforce the gaming debt. The distinction between suing on a gaming debt and the registration of a valid foreign judgment was succinctly put in the case of *Jupiters Ltd (trading as Conrad International Treasury Casino) v. Gan Kok Beng & Anor* [2008] 7 CLJ 715; [2007] 7 MLJ 228 where the court held as follows:

> Ian HC Chin J has comprehensively and admirably dealt with the issue of Public Policy (at pp 392-294) in the *The Ritz Hotel Casino Ltd & Anor v. Datu Seri Osu Haji Sukam* [2005] 6 MLJ 760 … the applicant had merely applied to register a judgment legally obtained in England pursuant to the Reciprocal Enforcement of Judgments Act 1958, but had not sought to enforce a cause of action founded on a gaming or wagering contract – in which case the *Lex Fori* of the country where the cause of action is sought to be litigated would have to prevail. Surely, it would be entirely consistent with or public policy for our Courts to accord due recognition to any reciprocal agreements between our country and another … In *Ritz Hotel Casino*, the defendants ought to be precluded from going behind the English judgment by submitting on our public policy. *Ritz Hotel Casino* and *Aspinall Curzon* ought to be distinguished from this case as those two cases only concern the registration of foreign judgments that has not only been provided for but sanctioned by statute, which enjoins our courts to allow registration if the papers are in order.

[15] Hence, in my view when a gaming transaction is lawful in the foreign country from where the judgment originates, the registration of the foreign judgment is not against the public policy of Malaysia.

Whether Service Of The Singapore Cause Papers Is Irregular

[16] The judgment debtor in the judgment debtor's affidavit in support and in the judgment debtor's affidavit in reply has attempted to raise the issues that the service of the Singapore cause papers on him is irregular. The judgment debtor also stated he has applied to set aside the service of the Singapore cause papers, the order for substituted service dated 10 November 2014 and the Singapore judgment dated 8 December 2014 in the Singapore High Court.

[17] The judgment creditor submitted that the Singapore cause papers were duly served on the judgment debtor in accordance with O. 65 r. 2A(2) of the Rules of Court 2012.

> Order 65 r. 2A, Alternative mode of service of foreign legal process
>
> (1) …

(2) The service of any such process within Malaysia may be affected by a method of service authorised by these Rules for the service of analogous process issued by the Court.

[18] The judgment creditor relied on the authority of the High Court in *Malayan Banking Bhd v. Ng Man Heng* [2005] 1 CLJ 833; [2005] 1 MLJ 470 where it was held at p. 855 (CLJ); p. 491A (MLJ) as follows:

… I am of the considered view that the service of the writ on the Judgment Debtor in Malaysia through a private agent is proper and valid.

[19] The affidavit evidence shows that the judgment debtor's application to set aside the service of Singapore cause papers, the order for substituted Service dated 11 November 2014 and the Singapore judgment dated 8 December 2014 was dismissed by the Assistant Registrar of the Singapore High Court on 31 July 2015.

[20] The evidence also shows that the judgment debtor then appealed against the Assistant Registrar's decision. The appeal was dismissed by the Singapore High Court on 22 September 2015. There were no further appeals filed by the judgment debtor and the time for the judgment debtor to file an appeal against the decision has lapsed.

[21] Accordingly, the issues on the irregularity and the validity of the service of the Singapore cause papers, the order for substituted service dated 10 November 2014 and the Singapore judgment dated 8 December 2014 are now irrelevant as the Singapore High Court has dismissed the judgment debtor's application.

Conclusion

[22] For the above reasons, encl. (12) is dismissed with costs of RM5,000.